

PT 97-56

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

---

MEMORIAL HEALTH SYSTEM	)		
Applicant	)		
	)	Docket #	95-84-14
v.	)		
	)	Parcel Index #s	14-28-280-021
	)		14-28-256-023
THE DEPARTMENT OF REVENUE	)		
OF THE STATE OF ILLINOIS	)		

---

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. J. Patrick Joyce, Jr. appeared on behalf of Memorial Health System, formerly Memorial Medical Center System, and Mr. Robert L. Smith, Assistant State's Attorney of Sangamon County, appeared on behalf of the Sangamon County Board of Review.

Synopsis:

The hearing in this matter was held on June 17, 1996, at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, to determine whether or not part or all of Sangamon County Parcel Index Nos. 14-28-280-021 and 14-28-256-023 qualified for exemption from real estate taxation for the 1995 assessment year.

Mr. V. Paul Smith, senior vice president and chief financial officer of Memorial Health System (hereinafter referred to as the "Applicant"), Mr. Thomas Cavender, vice president and facilities manager of the applicant, and Mr. R. Stephen Scott, managing partner of the Baylis Group Partnership (hereinafter referred to as the "Partnership"), were present and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant was the owner of these parcels during the 1995 assessment year; secondly, whether the applicant

is a charitable organization; and lastly, whether the Baylis Building and 1/2 of the parking garage which are located on these parcels were either used for charitable purposes or leased for profit during the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned these parcels during the 1995 assessment year. It is further determined that the applicant is a charitable organization. Finally, it is determined that the Baylis Building and 1/2 of the parking garage were leased or otherwise used with a view to profit and not primarily used for charitable purposes during the 1995 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter was established by the admission in evidence of Department's Exhibits 1 through 7B. That position was that the parcels here in issue and the buildings thereon qualified for exemption for the 1995 assessment year, except for the Baylis Building and the land on which it was located and 1/2 of the parking garage and 1/2 of the land on which it was located. The Baylis Building and the land on which it was located and 1/2 of the parking garage and 1/2 of the land on which it was located, the Department determined, did not qualify for exemption for the 1995 assessment year.

2. On the two parcels here in issue, three structures were constructed. The first of these structures was the Baylis Building. The Baylis Building houses the outpatient surgical and laboratory facilities of Memorial Medical Center (hereinafter referred to as "Medical Center") and also several groups of private physician's offices. The Baylis Building is a six level building. (Tr. pp. 98-104)

3. The second of these structures is the Southern Illinois University Medical School Clinic Building (hereinafter referred to as the "SIU Clinic Building") which is a four story building. (Tr. pp. 30 & 31)

4. Between the Baylis Building and the SIU Clinic Building is located the third structure, a four story parking garage. The parking garage is physically connected to both the Baylis Building and the SIU Clinic Building and contains several elevators to transport persons between floors. The parking garage provides easy access to both the Baylis Building and the SIU Clinic Building. (Tr. pp. 30 & 31)

5. The SIU Clinic Building is connected by a skyway north to the SIU Medical School Building. Also there is a skyway east from the SIU Clinic Building across Rutledge Street to the Medical Center complex. (Tr. p. 31)

6. On May 7, 1991, and April 8, 1991, the Medical Center conveyed the parcels here in issue by warranty deeds to Memorial Medical Center System, now known as Memorial Health System, the applicant in this proceeding. (Dept Ex. No. 1AQ).

7. The applicant, the Medical Center, and Health Care Network Associates (hereinafter referred to as "Network Associates") are all Illinois corporations, organized pursuant to the General Not For Profit Corporation Act of Illinois. (Tr. p. 20, Dept. Ex. Nos. 1BC, 1V, & 1X, and Appl. Ex. No. 1)

8. The applicant is the parent corporation of both the Medical Center and Network Associates. (Tr. p. 20, Dept. Ex. 1BC)

9. The bylaws of the Medical Center provide that medical treatment is to be provided to all patients regardless of race, religion, sex, national origin, or economic status. (Tr. p. 23, Dept. Ex. No. 1M)

10. None of the net earnings of the applicant, the Medical Center, or Network Associates inure to the benefit of private individuals, members, directors or officers of the said corporations. (Tr. p. 23)

11. The funds of the applicant, the Medical Center, and Network Associates are derived from public and private charity as well as fees for services. (Tr. p. 23)

12. The articles of incorporation of the applicant, the Medical Center and Network Associates each provide that the funds of those organizations are to be used for charitable, educational and scientific purposes. (Tr. p. 24)

13. I take Administrative Notice that the Director of the Department determined in Docket Nos. 82-84-8, 82-84-9, 82-84-10, 82-84-11, and 82-84-12, on July 31, 1985, that the Medical Center was a charitable organization. (Dept. Ex. 1K)

14. In the late 1980's, senior management of the applicant determined that it would be prudent to remove the outpatient services provided by the Medical Center from within the Medical Center complex. It was decided to build an easily accessible, separate, outpatient facility and medical office building across Rutledge Street to the west of the Medical Center. This building is known as the Baylis Building. The Baylis Building houses the Medical Center's outpatient surgical and laboratory facilities and also several groups of private physician's offices. (Tr. pp. 44-46)

15. At the same time, it was also determined to move about 80 of the SIU Medical School faculty physicians, who had offices in the Medical Center, into a new building. This new building, now known as the SIU Clinic Building, was to be built in the same general area as the Baylis Building, west of Rutledge Street, and south of the SIU Medical School Building. (Tr. pp. 44-46)

16. When the applicant was in the process of determining how to finance the Baylis Building, it was determined that it would be helpful if the building debt could be kept off the applicant's balance sheet. It was also determined that it would be helpful if the credit rating of the applicant could support the financing indirectly so that a reduced rate of interest could be obtained. (Tr. pp. 48 & 49)

17. The Baylis Group Partnership Revised and Restated General Partnership Agreement (hereinafter referred to as the "Partnership Agreement") was executed

on October 23, 1992, by and between Elvin G. Zook, Robert C. Russell, John O. Kucan, Donald E. Biggerstaff and Dennis L. Polk. (Dept. Ex. No. 1AR)

18. Drs. Zook, Russell, Kucan and Mr. Biggerstaff each owned 1200 units of the Partnership and were identified as "Original Physician Partners". Mr. Biggerstaff is a medical illustrator who works with the above named physicians, all of whom are affiliates of the Plastic and Reconstructive Institute of the SIU Medical School. (Tr. p. 88, Dept. Ex. No. 1AR)

19. Mr. Polk, who is identified as an "Original Non-Physician Partner", owned 800 units. Mr. Polk was brought into the Partnership to provide real estate expertise. The Partnership was authorized by the Partnership Agreement to issue 10,000 units of ownership (Dept. Ex. No. 1AR)

20. While the applicant routinely financed new construction with tax exempt bonds, because the Baylis Building was being constructed and would be owned during the lease term by the Partnership, a for profit entity, tax exempt bonds could not be used. It was therefore necessary to use taxable bonds. (Tr. pp. 44 & 53)

21. The construction of the Baylis building was financed by the issuance of weekly floating rate taxable bonds payable by the Partnership, which were guaranteed by a letter of credit from Societe Generale, an AAA rated French Bank. Later Kredietbank N.V., a Belgian AAA rated bank, was substituted for Societe Generale. The terms of the financing remained the same. The financing required that the Medical Center execute a lease vacancy agreement, whereby it agreed to lease up to 80% of the Baylis Building, if necessary, to guarantee the payment of the debt service on the bonds. (Tr. pp. 53-55, Dept. Ex. No. 1AI)

22. On January 1, 1994, 80% of the Baylis Building was not leased. Medical Center, pursuant to the terms of the lease vacancy agreement, was required to lease additional space, up to 80% of the building. (Tr. p. 56)

23 On March 21, 1991, the Medical Center, as landlord, entered into a ground lease concerning a portion of the parcels here in issue with the Partnership for

a term of 60 years. This ground lease granted the Partnership four successive 10 year renewal options. (Dept. Ex. 1Z)

24. The ground lease provides that the Partnership shall pay as base rent, the vacant, unimproved fair market rental value of the leased property. The ground lease goes on to provide that the base rent shall be adjusted pursuant to changes in the consumer price index every five years during the term of the lease. (Dept. Ex. 1Z)

25. The ground lease provides that the Partnership shall pay all real estate taxes levied both against the improvements and the ground during the term of the lease, including the applicant's interest therein. (Dept. Ex. 1Z)

26. The ground lease provides that the Medical Center may control generally who may lease space in the Baylis Building. This provision provides that lessees may include the Medical Center, physicians who are authorized to practice at the Medical Center, and ancillary medical businesses and activities. The ground lease also provides that if the Medical Center or one of its affiliates should terminate one or more of the occupancy leases which they hold, that vacant area may be leased for commercial purposes to other parties. (Dept. Ex. 1Z)

27. The ground lease also provides that the applicant shall lease to the Partnership one half of the parking spaces in the parking garage, on a non exclusive basis, for one dollar per gross square foot per year. This provision is in effect for the first five years of the ground lease. The rent is then to be increased for later years, pursuant to a formula contained in the ground lease. (Dept. Ex. 1Z)

28. There are approximately 600 parking spaces in the garage. The lease of one half of the parking garage to the Partnership allows the Baylis Building to comply with the City ordinance concerning parking. No charge is made to persons parking in the garage. (Tr. pp. 35 & 36)

29. The only reserved spaces in the parking garage are for the handicapped. (Tr. p. 35)

30. The applicant did not present any evidence as to what percentage of visitors or patients parking in the garage are going to the private physicians' offices in the Baylis Building. Nor was any evidence offered concerning what percentage of visitors or patients parking in the garage are going to other facilities in the Baylis Building, or elsewhere in the complex. (Tr. p. 37)

31. On May 1, 1991, the Medical Center assigned all of its rights and obligations, as landlord under the ground lease, to the applicant. On October 23, 1992, the applicant and the Partnership entered into a First Amendment to the Ground Lease. (Dept. Ex. No. 1AB)

32. The First Amendment to the Ground Lease provides that in view of the previously described reduced interest rate received by the Partnership, as a result of the applicant's assistance, the Partnership shall return to the Medical Center, as a reduction of the rent on the space the Medical Center leases in the Baylis Building, 60% of the reduction in debt service costs on the loan the applicant obtained for the Partnership on or before December 31 of each year that the debt service continues. (Dept. Ex. No. 1AB)

33. The testimony of the applicant's witnesses also indicated that the Declaration of Covenants, Conditions, Restrictions and Easements and the Baylis Building Repair, Maintenance, Janitorial and Security Services Agreement were both drafted and executed to allow the applicant to maintain control of the Baylis Building site, the development of the site, and the day to day operation, and maintenance of the Baylis Building after it was constructed. (Tr. pp. 93 & 94, Dept. Ex. Nos. 1Y & 1AJ)

34. The Partnership Agreement also provided that the Medical Center, or its affiliate, shall have the option to purchase an equity interest in the Partnership equal to the percentage of space which it or its affiliate occupied in the Baylis Building at the time it exercised the option. The Partnership agreement went on to provide that this percentage was not to exceed 50% of the equity interest in the partnership. (Dept. Ex. No. 1AR)

35. The Partnership Agreement also provides that each unit of ownership shall be entitled to its pro rata percentage of the net profits of the business of the partnership. (Dept. Ex. No. 1AR)

36. The net income, after all expenses of the Partnership for the calendar year 1995, was \$563,285.00. (Appl. Ex. No. 3)

37. The primary source of income to the Partnership is rental income from the leases of areas of the Baylis Building. (Tr. p. 81)

38. On March 31, 1993, the partners of the Partnership entered into a first amendment to the Partnership Agreement whereby the Original Physician Partners purchased the 800 units previously owned by Dennis L. Polk from Mr. Polk. This first amendment also required that Mr. R. Stephen Scott, an attorney, purchase 200 units and become the managing partner of the partnership, which he has done. (Dept. Ex. No. 1AS)

39 This first amendment also provided that the Original Physician Partners could transfer units in the Partnership among themselves, prior to the Certificate of Occupancy Date, upon such terms, conditions, and transfer prices as they shall solely determine. The first amendment also allowed the Original Physician Partners to transfer units of ownership to other Memorial Physicians. (Dept. Ex. No. 1AS)

40. On August 1, 1995, the owners of unit interests in the Partnership included the following:

<u>NAME</u>	<u>NO. OF UNITS</u>
Mr. Donald E. Biggerstaff	1,250.000
Dr. Robert C. Russell	1,250.000
Dr. Elvin G. Zook	1,250,000
Dr. John O. Kucan	1,250.000
Dr. Richard E. Brown	400.000
Mr. R. Stephen Scott	200.000
Dr. James L. Gildner	342.855



Dr. Patricia M. Visnesky	342.855
Dr. Edward A. Trudeau	179.670
Healthcare Network Associates	3,534.620
<hr/>	
TOTAL	10,000.000 (Dept. Ex. No. 1AZ)

41. Mr. Biggerstaff, Dr. Russell, Dr. Zook, Dr. Kucan and Dr. Brown are all affiliates of the Plastic and Reconstructive Institute of the SIU Medical School, which is located on the third floor of the Baylis Building. (Tr. p. 88)

42. Dr. Gildner and Dr. Visnesky are physician affiliates of Women's Healthcare Ltd. which rents space on the fourth floor of the Baylis Building. (Tr. pp. 88 & 89, Appl. Ex. No. 3)

43. Dr. Trudeau is a physician who also rents space on the fourth floor of the Baylis Building. (Tr. p. 89, Appl. Ex. No. 3)

44. Network Associates, a subsidiary of the applicant, leases a portion of the fourth and fifth floors of the Baylis Building. Network Associates subleases the portion of the fourth floor of the Baylis Building to Prairie Cardiovascular Group. The fifth floor of the Baylis Building is subleased by Network Associates to the Springfield Clinic. (Tr. pp. 103-105)

45. The University Pharmacy is a for-profit subsidiary of applicant located on the first floor of the Baylis Building. The applicant admits that the 901 square feet occupied by the University Pharmacy is taxable. The applicant admits that the 5778 square feet of the fourth floor, leased to Womens Healthcare, and the 1514 square feet of the fourth floor leased, to Dr. Trudeau, is taxable. The applicant also admits that the 11,246 square feet subleased to Prairie Cardiovascular on the fourth floor, and the 18,538 square feet, on the fifth floor, subleased to the Springfield Clinic, is taxable. (Dept. Ex. Nos. 1I, 1BR)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Supreme Court long ago determined that the question of whether property is exempt from taxation depends upon the constitutional and statutory provisions in force at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1923). The statutory provisions in force during the 1995 assessment year concerning the exemption of real property from real estate taxation were the provisions of the Property Tax Code, 35 **ILCS** 200/15-35 *et seq.*

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

35 **ILCS** 200/15-125 provides in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any . . . charitable institution which meets the qualifications for exemption, are exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944); and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the

burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989); and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

I conclude that the applicant owned the parcels here in issue during the 1995 assessment year.

I take Administrative Notice that the Department in the original decision in this matter determined that the SIU Clinic Building and one half of the parking garage qualified for exemption. I therefore conclude that the Department has determined that the applicant is a charitable organization.

As previously set forth, 35 ILCS 200/15-65 starts out as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit: (Emphasis supplied)

The Illinois Courts have long recognized that even though property may be owned by a charitable organization it must not be leased for profit, even though that profit may be used for charitable purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924); The People v. Passvant Hospital, 342 Ill. 193 (1930); and The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. If property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit, or sustains a loss. Turnverin "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

Even in the case of the religious exemption where only use for religious purposes is required, the Illinois Courts, where a for-profit owner has leased the property to the religious institution, have determined that the property did not qualify for exemption, since its primary use by the owner was for profit. American National Bank and Trust Company v. The Department of Revenue, 242

Ill.App.3d 716 (2nd Dist. 1993). See also Victory Christian Church v. Department of Revenue, 264 Ill.App.3d 919 (1st. Dist 1994).

It should be noted that the unit holders of the Partnership received profits from the rental of Partnership property. The unit holders, other than Network Associates and Mr. Scott, practiced medicine in the Baylis Building and used the building in various business pursuits, including performing out-patient surgery and conducting laboratory tests. In the case of People ex re. County Collector v. Hopedale Medical Foundation, 40 Ill.2d 450 (1970), the Supreme Court denied a charitable exemption to the foundation for the following reasons:

In addition, Dr. Rossi benefited, at least indirectly, from the private practice of medicine on Foundation property and from the use of Foundation facilities as an adjunct to his various business pursuits.

The foregoing statement identifies what the physician partners of the Partnership, all of whom have offices in the Baylis Building, were doing.

The Partnership is unquestionably a very profitable for-profit business which is clearly owned by some of the physician tenants of the Baylis Building. Even in 1995, when the Baylis Building was not fully occupied during the entire year, the net profit of the partnership was \$563,285.00. By my calculations, each of the Original Physician Partners' share of that profit was \$70,412.50. When you consider that the Partnership may participate in profits of this size or larger for up to 100 years, the Partnership ground lease from the applicant for the Baylis Building is a very profitable lease to the Original Physician Partners.

Concerning the original denial of exemption of one half the parking garage and the land on which it stands, one half of the parking garage is leased by the applicant to the Partnership pursuant to the ground lease, so that the Partnership, the owner of the Baylis Building, will be in compliance with the local parking ordinance. Consequently, the lease of one half of the parking garage, like the ground lease of the land where the Baylis Building has been built, is also being otherwise used for profit.

It should also be pointed out that the applicant did not present any evidence as to the percentage of visitors or patients using the garage who were going to the private physician's offices in the Baylis Building or what percentage were parking in the garage to go to other facilities in the Baylis Building or elsewhere in the complex. Where as here, the property as a whole was used for both exempt and non-exempt purposes, it will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is only incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); and also MacMurray College v. Wright, 38 Ill.2d 272 (1967). No evidence was offered that the exempt use in this case was the primary use. Consequently, I conclude that the applicant has failed to establish that any portion of the one-half of the parking garage leased to the Partnership qualified for exemption.

The applicant's admission that the spaces leased or subleased to private physicians in the Baylis Building should be subject to taxation is simply the result of the applicant's attorney recognizing the holding of the Appellate Court in Mason District Hospital v. Tuttle, 61 Ill.App.3d 1034 (4th Dist. 1978). In that case, the Court concluded that the primary use of a doctor's office building was to benefit the private physicians practicing there, which was primarily not a charitable use of the property.

Let us now turn to a consideration of the applicant's brief. The applicant's attorney first cites the case of Childrens Development Center v. Olson, 52 Ill.2d 332 (1972), for the proposition that the mere leasing of property does not destroy its tax-exempt status. The proper test, he contends, is whether the primary use of the property after leasing is with a view to profit. That case is distinguishable from the case here in issue. In Childrens Development Center, the School Sisters of St. Francis, an exempt religious order, leased a portion of their former convent to the Childrens Development Center, an exempt, charitable, organization which provided programs for educationally handicapped children. Therefore, Childrens Development Center concerned one

exempt entity which leased property to another exempt entity which used the property for exempt purposes. In this case, the applicant leased the areas here in issue to the Partnership, which I have previously concluded is a non-exempt for profit organization, which used the property with a view to profit. Consequently, I conclude that Childrens Development Center is not applicable to this situation.

The applicant's attorney argues that the issue here is ownership. The issue here is not ownership, rather it is the leasing. In particular, the leasing by the applicant of a portion of these parcels to the Partnership which used that portion with a view to profit.

In regard to his ownership issue, applicant's attorney cites the case of City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992). That case involves a ground lease between the owner of the real estate and the City, which owned a building on the ground lease. The statute exempting cities at that time included a provision which reads as follows:

. . . all public buildings belonging to any . . . city with the ground on which the buildings are erected; . . . .

Based upon the specific statutory language which separates buildings and grounds, the Court concluded that the city owned building qualified for exemption, while the land owned by Chicago Dock Equitable Venture, a private for profit entity, did not qualify for exemption. The statutory provision here in issue, 35 **ILCS** 200/16-65, clearly requires that the property be owned by an institution of public charity and used for charitable purposes. In addition, the Courts have held that to qualify for exemption from taxation as a charity, property must be owned by a charitable organization and used for charitable purposes. Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978). The City of Chicago case, therefore, is distinguishable from this case as a result of the very different statutory language concerning the exemption of city owned buildings.

The next case cited by the applicant's attorney in his brief is the case of Cole Hospital, Inc. v. Champaign County Board of Review, 113 Ill.App.3d 96 (4th Dist. 1983). That case involved a sale and lease-back arrangement and the issue was whether the lessee had sufficient incidents of ownership to qualify for exemption. As previously stated, the issue here is not ownership, but use of the Baylis Building and 1/2 of the parking garage for profit. Cole Hospital is also distinguishable from the case here in issue. In Cole Hospital, Cole sought financing for its building from the State through the use of revenue bonds, as well as from a number of private financing agencies. Cole Hospital was unable to find anyone willing to loan it the money, other than Safe Care. The loan required the sale and lease back arrangement. The Court then held that due to Cole's inability to obtain financing elsewhere, this method was simply an alternative method of financing the building. Therefore, Cole Hospital was the owner of the building for real estate tax purposes and qualified for exemption. That issue and fact scenario is not the case here. The only reason given by the applicant for the ground lease with the Partnership was to get the debt off the applicant's books. In fact, the very low interest rate obtained for the bond financing for the Baylis Building makes it clear that the applicant has a very good credit rating and could have obtained financing for this project if it had chosen to do so.

Next, the applicant's attorney in his brief cites the case of Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996), for the proposition that because the applicant owned the land and its subsidiaries, the Medical Center and Network Associates, were the lessees of certain portions of the Baylis Building, that the applicant was entitled to some sort of an exemption for the Baylis Building and the land on which it stands. The Chicago Patrolmen's case held that because the Chicago Police Museum had an undivided 50% interest in a land trust, it was the owner of an undivided 50% of the land and buildings on the parcels subject to the land trust and therefore entitled to a 50% exemption

concerning said parcels. The Court in that decision cautioned that where, as here, the applicant is unable to quantify the ownership interest which it held, it would not qualify for an exemption.

In light of the Chicago Patrolmen's case, since the ground lease quantifies the leasing of an undivided 50% of the parking garage pursuant to the ground lease from the applicant to the Partnership, I hereby conclude that said undivided 50% of the parking garage was leased or otherwise used for profit and consequently did not qualify for exemption.

The remaining cases cited in the applicant's brief are cited for the proposition that property owned by a charitable organization, if the use of the property is reasonably necessary for the accomplishment and fulfillment of the charitable objectives or efficient administration of the organization, will qualify for exemption. Evangelical Hospital Association v. Novak, 124 Ill.App.3d 439 (2nd Dist. 1984); Evangelical Hospitals Corporation v. Department of Revenue, 238 Ill.App.3d 225 (2nd Dist. 1991); and Norwegian American Hospital, Inc. v. Department of Revenue, 210 Ill.App.3d 318 (1st Dist. 1991). As previously pointed out, the Partnership is not a charitable organization. The issue in this case is whether the portion of these parcels where 50% of the parking garage and the Baylis Building are located were either leased or otherwise used for profit.

It is clear from the record that the applicant owned the parcels here in issue and controlled the selection of the method used to finance the construction of the Baylis Building. The record indicates that the only reason that the applicant entered into the ground lease with the Partnership was to keep the debt off the applicant's financial statement. The only way to get the Original Physician Partners involved in the financing of the Baylis Building, in our free enterprise society, was to offer a profitable arrangement to the Partnership, which the applicant did. The applicant most certainly could have used other methods to finance the construction of the Baylis Building, which would have been



tax exempt. The method used by the applicant clearly does not qualify for exemption.

I therefore recommend that Sangamon County Parcel Index Nos. 14-28-280-021 and 14-28-256-023, and the buildings thereon, be exempt from real estate taxation for the 1995 assessment year except for 1/2 of the parking garage and 1/2 of the land on which it is located, and the Baylis Building and the land on which it is located.

I further recommend that the 1/2 of the parking garage and 1/2 of the land on which it is located, and the Baylis Building and the land on which it is located, remain on the tax rolls and be assessed for the 1995 assessment year to the applicant, Memorial Health System, the owner thereof.

Respectfully Submitted,

---

George H. Nafziger  
Administrative Law Judge  
September 29, 1997